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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/079,814 05/16/98 NEMIRE

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MARTIN L STONEMAN  
3113 N, 3RD STREET  
PHOENIX AZ 85012-2601

PM82/1011

EXAMINER

ROWAN, K

ART UNIT

PAPER NUMBER

3643

DATE MAILED:

10/11/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/079,814**

Applicant(s)  
**NEMIRE**

Examiner  
**KURT ROWAN**

Art Unit  
**3643**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jul 23, 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above, claim(s) 21-24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 10, 17, and 18 is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-16, 19, 20, 25, and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election with traverse of the restriction in Paper No. 4 is acknowledged. The traversal is on the ground(s) that the examiner already searched the subclasses. This is not found persuasive because the search was not for the rattle as recited in claims 21-22, but for merely a rattle means or the propeller as recited in claims 23-24 which would be found in 43/42.19 and not searched.

The requirement is still deemed proper and is therefore made FINAL.

2. This application contains claims 21-24 drawn to an invention nonelected with traverse in Paper No. 3. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Drawings***

3. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

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***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 8, 11-12, 14-16, 19-20, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adam in view of Reimers.

The patents to Adam and Reimers show fishing lures. Adam shows an elongate body 1 having a central axis, a concave inner surface 17 and a convex outer surface (not labeled but the side with weight 16), a rounded trailing edge 3, a rounded leading edge 2 and a hole 4. Adam shows a hook 28 which acts as a snaring means. Adam shows an attachment means 7 for attaching the fishing line 8 to the body portion and a holding means 21. The attachment means 7 is rigidly held proximate the hole. Adam does not show a rattle means. The patent to Reimers shows a spoon fishing lure 10 having a rattle means 21-23 noting Fig. 6. The dome 20 acts as a rattle holding means. In reference to claim 1, it would have been obvious to provide Adam with a rattle as shown by Reimers to attract more fish. In reference to claim 2, Reimers shows a bracket 20 having an elongated portion, a top surface and a curved portion which is arranged to partially encircle the rattle means 23 as shown in Figs. 1-4. In reference to claim 3, Reimers shows a spherical body portion, but it would have been obvious to employ a cylindrical body portion having a chamber for holding at least one movable body since the function is the same and no

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stated problem is solved. In reference to claim 4, Adam shows the leading edge 2 having a larger radius than the trailing edge 3. In reference to claim 5, Adam shows a hook 28. In reference to claim 8, Adam shows a skirt (not labeled but see Fig. 7). In reference to claims 11, 19, Adam shows an elongated wire 5 having a looped first end 7 a straight central portion and a looped second end 6. In reference to claims 12, 20, Adam shows a propeller 13-15. In reference to claim 14, Adam shows hole 4 adjacent the rounded leading edge of the lure body portion. In reference to claim 15, Adam does not disclose that the hole is at approximately 12 percent of the distance between the leading edge and the rounded trailing edge. However, it would have been obvious to locate the hole at a distance of 12 percent between the leading edge to the trailing edge since routine experimentation would be used to determine the optimum location of the hole. In reference to claim 16, see the rejections of claims 1-5, 15, above.

6. Claims 6-7, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adam and Reimers as applied to claim 1 above, and further in view of Schavey.

The patents to Adam, Reimers and Schavey show fishing lures. Adam and Reimers have been discussed above. Schavey shows a lure having a holder (not labeled) for skirt 20 which has a plurality of filaments that act as a weed guard. Schavey also shows a propeller B having a flat body having a first body end and integrally attached to the first body a pair of circular propeller portions with each circular propeller having a circular inner surface and a circular outer surface as shown in Figs. 6-7. In reference to claims 6-7, it would have been obvious to provide the lure of Adam as modified by Reimers with a holder having a hollow upper end as shown by Schavey

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since merely one filament holder is being replaced with another one which is an equivalent mechanical part. In reference to claim 13, Adam shows a propeller having a cylindrical section 15 and curved blades 13-14. It would have been obvious to provide the lure of Adam as modified by Reimers with a propeller as shown by Schavey since merely one propeller is being substituted for another.

7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adam in view of Reimers as applied to claim 1 above, and further in view of Drake.

The patents to Adam, Reimers and Drake show fishing lures. Adam and Reimers have been discussed above and show all of the elements recited in Claim 25 with the exception of the rattle means being positioned transverse to the body. Reimers shows the rattle means being both transverse and parallel to the body due to the spherical container. Drake shows a fishing lure with a transverse rattle holding means 15. In reference to claim 25, it would have been obvious to provide the lure of Adam as modified by Reimers with a transverse rattle holding means as shown by Drake since the function is the same and no stated problem is solved.

***Allowable Subject Matter***

8. Claims 9-10, 17-18 are allowed.

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***Response to Arguments***

9. Applicant's arguments with respect to claims 1-8, 11-16, 19-20, 25-26 have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant's arguments filed July 23, 2001 have been fully considered but they are not persuasive. The attachment means of Adam can be considered as rigidly held since a pull on the attachment means will not separate the lure from the attachment means. More structure should be recited to overcome Adam in the way the attachment means mounts to the lure body. Routine experimentation would determine the optimum location for the hole in the lure body so as to maximize the desired effect. The fact the filaments of Schavey extend past the point of the hook does not mean that the filaments do not span the distance since, for example, a bridge that spans a river can extend well beyond the extent of the river. The propellers of Schavey can be considered as circular since they rotate in a circle in the water

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Fike, Schellenberg, Koch, Gowing, Sacharnoski, Stevens, and Bratz show other lures with transversely mounted sound making means.

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12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read "Kurt Rowan". The signature is written in a cursive, flowing style.

KURT ROWAN

PRIMARY EXAMINER

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Oct. 9, 2001